

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of

Lifeline and Link Up Reform and Modernization

Federal-State Joint Board on Universal Service

Lifeline and Link Up

WC Docket No. 11-42

CC Docket No. 96-45

WC Docket No. 03-109  
DA 11-1346

**REPLY COMMENTS OF  
THE MASSACHUSETTS DEPARTMENT OF  
TELECOMMUNICATIONS AND CABLE**

Commonwealth of Massachusetts  
Department of Telecommunications and Cable

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Dated: September 2, 2011

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The Massachusetts Department of Telecommunications and Cable (MDTC)<sup>1</sup> respectfully submits these reply comments in response to the August 26 initial comments on the August 5, 2011 Public Notice of Further Inquiry into Four Issues in the Universal Service Lifeline/Link Up Reform and Modernization Proceeding (Notice) issued by the Federal Communications Commission (FCC or Commission) in the above-referenced proceeding.<sup>2</sup> The FCC seeks additional comment regarding: 1) a proposed Lifeline/Link Up broadband pilot program, 2) the Link Up activation fee, 3) sampling method for eligibility verification, and 4) the “one-discount-per-residence” limit for Lifeline support.

The MDTC generally supports the use of Lifeline funds for a broadband pilot program and encourages the FCC to adopt a pilot framework that is not technology-specific and permits innovative approaches. Whether an eligible telecommunications carrier (ETC) should be allowed

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<sup>1</sup> The MDTC is the exclusive state regulator of telecommunications and cable services within the Commonwealth of Massachusetts. M. G. L. C. 25C, § 1.

<sup>2</sup> *Public Notice of Further Inquiry Into Four Issues in the Universal Service Lifeline / Link Up Reform and Modernization Proceeding*, WC Docket Nos. 11-42, 03-109; CC Docket No. 96-45, DA 11-1346 (rel. Aug. 5, 2011) (Notice).

to charge a Link Up activation fee is an active issue in a pending MDTC ETC certification proceeding, and the MDTC respectfully requests that the FCC's upcoming order respect non-default state ETC authority on this issue. The FCC should also permit states to set higher sampling levels for eligibility verification. Finally, the MDTC urges the FCC to adopt exceptions to the one-per-residence rule to ensure that otherwise eligible consumers in group-living arrangements (such as shelters) are not denied support.<sup>3</sup>

# **I. MASSACHUSETTS IS A NON-DEFAULT ETC STATE WITH PENDING ETC APPLICATIONS.**

Lifeline is a federal universal service support mechanism designed to provide low-income consumers with discounted monthly telephone service for a single line per household.<sup>4</sup> Link Up is the federal universal service fund support mechanism for reducing the charge for the initial connection charge at a consumer's principal residence.<sup>5</sup> The Link Up discount is a carrier reimbursement program and, with Lifeline, is funded as part of the Low Income Program of the federal Universal Service Fund.<sup>6</sup> Both discounts are administered by the Universal Service Administration Company (USAC). State commissions have primary responsibility for granting an ETC designation and must determine whether such designation is in the public interest.<sup>7</sup> The MDTC is one of several non-federal default states that sets its own procedures for certification and verification of Lifeline customers.<sup>8</sup> The MDTC has four certified ETC carriers currently

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<sup>3</sup> The MDTC's silence on any particular issue presented in this docket should not be construed as rejection or support of that issue.

<sup>4</sup> *In the Matter of Lifeline and Link-Up*, 19 F.C.C.R. 8302, WC Docket No. 03-109, FCC 04-87, Report and Order and Further Notice of Proposed Rulemaking (rel. Apr. 29, 2004) (Lifeline Order).

<sup>5</sup> 47 C.F.R § 54.411.

<sup>6</sup> 47 C.F.R § 54.407(b).

<sup>7</sup> 47 U.S.C. § 214(e)(2).

<sup>8</sup> *TracFone Wireless, Inc. Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 09-9, Order (rel. June 30, 2010) (First TracFone Order). A federal default state is a state which has not chosen to assume ETC certification responsibilities.

offering Lifeline voice services: TracFone Wireless Inc.; Verizon Massachusetts; Granby Telephone and Telegraph Company, Inc.; and Richmond Telephone Company. TracFone is the only wireless ETC certified in Massachusetts. During the first half of 2011, Massachusetts ETCs combined received over \$16 million from the federal Lifeline program and roughly \$1,800 from the Link Up program.<sup>9</sup> The MDTC requires its ETCs to file their annual verification surveys to USAC and to submit to additional audit report requirements.<sup>10</sup>

The MDTC has seven pending wireless ETC petitions.<sup>11</sup> USAC data indicates Massachusetts had 221,280 Lifeline subscribers during the first half of 2010, which USAC estimates reflects a 20% to 50% participation rate.<sup>12</sup> The Lifeline reimbursement for Massachusetts subscribers ranges between \$6.35 and \$10 monthly per subscriber, while the Link Up reimbursement to carriers for activation costs is up to a \$30 reimbursement.<sup>13</sup> The MDTC has opened a proceeding to reexamine and modernize the Lifeline and Link Up programs.<sup>14</sup>

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<sup>9</sup> In 2011, TracFone received \$11.1 million in Lifeline support and \$0 in Link Up; Verizon Massachusetts received \$4.9 million in Lifeline, \$1,809 in Link Up; Granby received \$5,861 in Lifeline and \$27 in Link Up; Richmond received \$320 in Lifeline and \$0 in Link Up. USAC Low Income Disbursement Data for Massachusetts, 2011, accessed Aug. 24, 2011, via <http://www.usac.org/li/tools/disbursements/results.aspx>.

<sup>10</sup> First TracFone Order, p. 4, Attachment 1 (Additional Audit Report Instructions).

<sup>11</sup> *Petition of Virgin Mobile for ETC Designation*, DTC 10-11, filed Oct. 19, 2010; *Petition of YourTel for ETC Designation*, DTC 11-1, filed Feb. 10, 2011; *Petition of Conexions, LLC d/b/a Conexion Wireless for ETC Designation*, DTC 11-3 filed Mar. 16, 2011; *Petition of Safari Communications, Inc. for ETC Designation*, DTC 11-4, filed Apr. 28, 2011; *Petition of Aegis Telecom d/b/a Off the Hook Telecom for ETC Designation*, DTC 11-5, filed Apr. 28, 2011; *Petition of Nexus Communications, Inc., for ETC Designation*, DTC 11-7, filed June 29, 2011; *Petition of TAG Mobile, LLC for ETC Designation*, DTC 11-8, filed July 13, 2011.

<sup>12</sup> USAC Lifeline Subscribership by State or Jurisdiction, 4Q 2011, Appendix LI08, subscribers reported through June 2011; accessible at <http://www.universalservice.org/about/governance/fcc-filings/2011/quarter-4.aspx>, viewed Aug. 23, 2011; 2010 Lifeline Participation Rates by State, USAC, accessible at <http://www.usac.org/res/documents/li/pdf/li-participation-rate-map-2010.pdf>. Viewed Aug. 23, 2011.

<sup>13</sup> USAC Low Income Support Available by State – 4Q 2011, Appendix LI02, 4Q 2011, Massachusetts, accessible at <http://www.universalservice.org/about/governance/fcc-filings/2011/quarter-4.aspx>, viewed Aug. 23, 2011; FCC Consumer Guide to Lifeline and Link Up, accessible at <http://www.fcc.gov/guides/lifeline-and-link-affordable-telephone-service-income-eligible-consumers>, viewed Aug. 23, 2011.

<sup>14</sup> *Lifeline Investigation*, D.T.C. 10-3, Order Opening Investigation (Sep. 27, 2010) (D.T.C. 10-3 Lifeline Investigation).

## **II. A LIFELINE BROADBAND PILOT PROGRAM SHOULD ALLOW FOR INNOVATION.**

Regarding a proposed Lifeline/Link Up broadband pilot program, the Notice seeks information about the scope of permissible funding for equipment and training; eligibility standards; product bundling requirements and other barriers to participation; and program reporting and evaluation requirements.<sup>15</sup> The MDTC, as stated in our April 21, 2011 comments filed in this docket, supports the use of Lifeline for funding a broadband pilot program.<sup>16</sup> Other commenters agree.<sup>17</sup> The MDTC's recommendation, however, is conditioned on the FCC concluding that it has legal authority to expend universal service funds for such a program.<sup>18</sup> Another condition precedent is the FCC resolving whether universal service funds can be given to non-ETCs. As a state public service commission which certifies ETCs for USF purposes, the MDTC encourages the Commission to retain the ETC designation as a requirement for Lifeline and Link Up funding, including as a broadband pilot program.

The MDTC also encourages the FCC to adopt a pilot framework that is not technology-specific and will permit innovative approaches. Any rules which the FCC adopts to fund broadband pilot programs should not be company or technology-specific but should be designed to encourage effective, innovative, and efficient programs. Also, the FCC should ensure that state entities that certify ETCs have access to their state-specific data for broadband pilot programs so that states can directly monitor the pilot programs' progress in their jurisdictions. Following these recommendations will help ensure the creation of innovative, effective broadband pilot programs.

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<sup>15</sup> Notice at 2-3.

<sup>16</sup> MDTC Comments (filed Apr. 21, 2011), p. 11.

<sup>17</sup> CenturyLink Comments, p. 1; Free State Foundation Comments, pp. 3-4; National Association of State Utility Consumer Advocates and the New Jersey Division of Rate Counsel (NASUCA and NJ Rate Counsel) Comments, p. 3; Sprint Nextel Comments, p. 1; TracFone Wireless Comments, p. 1.

<sup>18</sup> The FCC recognizes this assessment need in its Notice (p. 2).

### **III. THE LINK UP ACTIVATION FEE IS AN ACTIVE ISSUE IN A PENDING MASSACHUSETTS ETC DOCKET.**

The Notice seeks comment on whether the FCC should eliminate the reimbursement for Link Up costs, especially the activation fee.<sup>19</sup> Some commenters promote eliminating the activation fee, asserting that automation has reduced or eliminated the cost of initiating service.<sup>20</sup> Others support the activation fee or setting a reasonable reimbursement cap.<sup>21</sup> The Notice asks if the reimbursement should be limited to costs actually incurred for initiating service, or limit support for physical installation of facilities at the consumer's address.<sup>22</sup>

Whether an ETC should be allowed to charge a Link Up activation fee is an active issue in a pending MDTC ETC certification proceeding.<sup>23</sup> While the MDTC does not oppose the FCC establishing guiding factors to be considered when a federal non-default state reviews a petition for Link Up support, the MDTC asserts that the state is in the best position to make a public interest determination. Therefore, the MDTC respectfully requests that the FCC's upcoming Lifeline order not preempt the authority of federal non-default states, including Massachusetts, to review this issue.

### **IV. THE FCC SHOULD ALLOW STATES TO IMPLEMENT THEIR OWN ETC SAMPLING SIZE REQUIREMENTS.**

The FCC's 2011 Lifeline and Link Up Notice of Proposed Rulemaking (NPRM) seeks to establish a uniform method for eligibility verification sampling using a sample-and-census

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<sup>19</sup> Notice, p. 6.

<sup>20</sup> AT&T Comments, p. 9; TracFone Wireless Comments, p. 6.

<sup>21</sup> California Public Utility Commission Comments, p. 8; CenturyLink Comments, p. 3; COMPTTEL Comments, pp. 7-10; Gila River Telecommunications Comments, p. 15; NASUCA and NJ Rate Counsel Comments, p. 10.

<sup>22</sup> Notice, p. 7.

<sup>23</sup> *Petition of YourTel America, Inc. for Designation as an Eligible Telecommunications Carrier*, D.T.C. 11-1 (filed Feb. 10, 2011).

proposal.<sup>24</sup> The Notice seeks comment on using a uniform sample-and-census rule that requires smaller sample size for ETCs with fewer consumers.<sup>25</sup> ETCs certified in federal non-default states, including Massachusetts, must comply with state certification of eligibility verification requirements.<sup>26</sup> Massachusetts is currently a self-certification jurisdiction, meaning the customer must sign a self-certification statement on the application form attesting that they meet the eligibility criteria.

The MDTC has been examining the eligibility verification sampling process used by its ETC providers, including TracFone Wireless.<sup>27</sup> In its first annual audit of subscribers, TracFone followed the FCC's default sample size requirement<sup>28</sup> and successfully verified 22 of 43 sampled, for a verification rate of 51%.<sup>29</sup> The MDTC concluded that the rate of ineligible subscribers, 49%, was unacceptably high.<sup>30</sup> In its second annual audit of subscribers, TracFone again followed the FCC's current sample size requirement which resulted in a survey of 244

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<sup>24</sup> *Lifeline and Link Up Reform and Modernization; Federal-State Joint Board on Universal Service; Lifeline and Link up*, WC Docket Nos. 11-42, 03-109, CC Docket No. 96-45, Notice of Proposed Rulemaking, 26 FCC Rcd 2770 (2011) (NPRM), ¶ 177.

<sup>25</sup> Notice, P. 7.

<sup>26</sup> 47 C.F.R. §§ 54.409(a); 54.410(a)(1), (c)(1).

<sup>27</sup> In 2008, the FCC granted TracFone's petition to be designated as an ETC in Massachusetts, as well as in several other states, under certain conditions. First TracFone Order, p. 2-3. The MDTC has exerted its ETC designation authority since that time. *Id.* at Attachment 1. One condition is to provide the MDTC with an annual audit of its Lifeline and Link Up eligibility verification process. *TracFone Wireless Inc., Annual Verification of SafeLink Wireless Lifeline Subscribers*, D.T.C. 10-6, Order (October 19, 2010) (Second TracFone Order) at 1. TracFone's next annual audit of its Lifeline certification and verification process is due to the MDTC on August 31, 2011. *Id.* at 4.

<sup>28</sup> *In the Matter of Lifeline and Link-Up*, 19 F.C.C.R. 8302, Report and Order and Further Notice of Proposed Rulemaking at 8306-07, WC Docket No. 03-109, FCC 04-87 (rel. Apr. 29, 2004) (Lifeline Order), Appendix J, Statistically Valid Sample.

<sup>29</sup> *First TracFone Order* at 13.

<sup>30</sup> *Id.*

people out of 137,000 subscribers.<sup>31</sup> Nearly 30% of the subscribers in the sample did not respond to the survey.<sup>32</sup>

In 2010, the MDTC found that TracFone's existing certification and verification procedures in Massachusetts were insufficient to ensure that only eligible consumers receive Lifeline services.<sup>33</sup> The Department, therefore, opened its current Lifeline investigation to, *inter alia*, establish appropriate state certification and verification procedures to facilitate effective and efficient administration of the Lifeline program, foster timely enrollment, and ensure that only eligible subscribers receive Lifeline supported services.<sup>34</sup> The MDTC is also examining whether the federal default sampling size method, which resulted in sampling less than 1/5<sup>th</sup> of one percent of TracFone's Lifeline 2010 subscriber base in Massachusetts, is appropriate and in the public interest.

The MDTC encourages the FCC to allow states to set state sampling levels higher than the federal default table. Massachusetts is well-positioned to consider the merits and drawbacks of various sampling size options and to set a uniform sample size requirement for all ETCs who operate in the Commonwealth of Massachusetts. Accordingly, the MDTC urges the FCC to preserve the states' crucial role in the administration of the Program and to include in any certification and verification reforms state authority to adopt additional procedures.

## **V. THE ONE-PER-RESIDENCE RULE WILL EXCLUDE ELIGIBLE CONSUMERS WHO LIVE IN GROUP LIVING FACILITIES.**

The FCC proposed in its NPRM to restrict Lifeline and Link Up support to only one discount per residential address.<sup>35</sup> On June 21, the FCC released an order clarifying that low-

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<sup>31</sup> Second TracFone Order at 2; Lifeline Order, Appendix J, Sample Size Table p. J-2.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> First TracFone Order at 15-16.

<sup>34</sup> D.T.C. 10-3 Lifeline Investigation, Order Opening Investigation, p. 3.

<sup>35</sup> NPRM, ¶ 106.



income consumers could receive only a single Lifeline benefit and required an ETC to de-enroll a subscriber when USAC notifies the ETC that the subscriber receives multiple Lifeline benefits.<sup>36</sup> On August 5, the Commission sought further comment in the Notice on whether granting one Lifeline discount per household or residence is administratively feasible given the varying definitions of “household” and the prevalence of group living facilities.<sup>37</sup> The Notice also seeks comment on whether ETCs should be allowed to create their own standards of determining whether a collection of unrelated persons, such as a group home, constitutes a “household.”<sup>38</sup>

As stated in our April 21 comments, the MDTC supports the FCC’s NPRM proposal to clarify the single-line-per-residence requirement by formally adopting the one-per-residential-address (“one-per-residence”) rule.<sup>39</sup> Such a rule would limit support to a single subscription per U.S. Postal Service address while minimizing waste, fraud and abuse; targeting support where it is needed most; and maximizing the number of Americans with access to communications services.<sup>40</sup> However, as expressed in our April 21 comments, the MDTC is concerned that because the one-per-residence rule is address-based, it will unintentionally deny benefits to those individuals who have a substantial need, and who are likely eligible for, Lifeline support. Thus, the MDTC strongly urges the FCC to adopt much needed exceptions to the one-per-residence rule to ensure that otherwise eligible consumers in group-living arrangements (such as

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<sup>36</sup> *In the Matter of Lifeline and Link Up Reform and Modernization*, WC Docket No. 11-42; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45; *Lifeline and Link up*, WC Docket No. 03-109; Report and Order, FCC 11-97 (rel. June 21, 2011), ¶ 2.

<sup>37</sup> Notice, pp. 4-5.

<sup>38</sup> *Id.*

<sup>39</sup> MDTC Comments, WC Docket No. 11-42 (filed Apr. 21, 2011), p. 5.

<sup>40</sup> NPRM at ¶¶ 107, 111.

shelters)—or other non-traditional housing arrangements—are not denied support.<sup>41</sup> Allowing the ETCs to create their own standards for qualifying “households” will create inconsistency and confusion and thus, the MDTC opposes extending such authority to ETCs.

## **VI. CONCLUSION.**

The Commission encourages the FCC to adopt a pilot framework that is not technology-specific and will permit innovative approaches. The MDTC respectfully requests that the FCC’s upcoming order support non-default state ETC authority to consider activation fees. The FCC should permit states to set higher sampling levels for eligibility verification. Finally, the MDTC urges the FCC to adopt exceptions to the one-per-residence rule to ensure that otherwise eligible consumers in group-living arrangements (such as shelters) are not denied support.

Respectfully submitted,

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<sup>41</sup> MDTC Comments, WC Docket No. 11-42 (filed Apr. 21, 2011), p. 5.